

## § 222.31

(5) For the purpose of paragraph (1)(iv) of this definition, education provided under public supervision and direction means education that is provided—

(i) In a school of the applicant LEA or another LEA; or

(ii) By another educational entity, over which the applicant LEA, or other public agency, exercises authority with respect to the significant aspects of the educational program for the children claimed. The Secretary considers significant aspects of the educational program to include administrative decisions relating to teachers, instruction, and curriculum.

(Authority: 20 U.S.C. 7703, 7709, 7713(6))

## § 222.31 To which local educational agencies does the Secretary make basic support payments under section 8003(b) of the Act?

The Secretary makes payments to an LEA with an otherwise approvable application for children claimed under section 8003(b) of the Act if—

(a) The LEA meets the requirements in subpart A of these regulations and this subpart; and

(b)(1) The LEA is responsible under applicable State or Federal law for providing a free public education to those children;

(2) The LEA is providing a free public education to those children; and

(3) The State provides funds for the education of those children on the same basis as all other public school children in the State, unless permitted otherwise under section 8009 of the Act.

(Authority: 20 U.S.C. 7703 and 7709)

## § 222.32 Upon what information is a local educational agency's basic support payment based?

(a) The Secretary determines an LEA's payment under section 8003(b) on the basis of information in the LEA's application, including information regarding the membership of federally connected children.

(b) The LEA must supply information in its application regarding its federally connected membership on the

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basis of any count described in §§ 222.33 through 222.35.

(Approved by the Office of Management and Budget under control number 1810–0036)

(Authority: 20 U.S.C. 7703 and 7705)

## § 222.33 When must an applicant make its first or only membership count?

(a)(1) An applicant must select a day in the current school year as the survey date for making the first membership count, which must be no earlier than the fourth day of the regular school year and on or before January 31.

(2) The applicant must use the same survey date for all schools in the LEA.

(b) As of the survey date, the applicant must—

(1) Count the membership of its federally connected children; and

(2) Count the total membership of its children—both federally connected and non-federally connected.

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(Authority: 20 U.S.C. 7703, 7705, 7706)

## § 222.34 If an applicant makes a second membership count, when must that count be made?

(a)(1) The applicant may, but is not required to, make a second count of membership.

(2) If the applicant chooses to make a second count of membership, the applicant must select a day after January 31, but no later than May 14, as the survey date for making the second membership count, and make that count in accordance with § 222.33(b).

(3) The applicant must use the same survey date for the second membership count for all schools in the LEA.

(b) The applicant may use the information obtained from a second membership count to amend its application for assistance as described in § 222.5(b)(1).

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(Authority: 20 U.S.C. 7703 and 7705)

## § 222.35 How does a local educational agency count the membership of its federally connected children?

An applicant counts the membership of its federally connected children by